IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

RCRev..No. 351 of 2006

RCA.191/2005 of RENT CONTROL APPELLATE AUTHORITY, KOZHIKODE
RCP.93/2004 of RENT CONTROL COURT. KOZHIKODE
.....

REVISION PETITIONER/APPELLANT/RESPONDENT:

KAMMILI BALAN, S/O. CHEKKUTTY,
"NIRMALIAM", VELLIYANI KOLLIL,
PERUNTHIRUTHIYIL, KARANNUR AMSOM,
DESOM, ELATHUR, KOZHIKODE.

BY ADV. SRI.K.P.BALASUBRAMANYAN
SRI.NIRMAL. S

RESPONDENTS/RESPONDENTS/PETITIONERS:

1. K.K. LAKSHMI, AGED 56 YEARS,
W/O. SREENIVASAN, PERIYAPUTHALATH,
EDAKKAD AMSOM, PUTHIYANGADI
DESOM, KOZHIKODE TALUK.

2. C.P. SREEJITH, AGED 32 YEARS,
S/O. SREENIVASAN, DO. DO.

3. SREEKALA, AGED 28 YEARS,
D/O. SREENIVASAN, DO. DO.

BY ADV. SRI.P.V.KUNHIKRISHNAN

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 07/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

R.C.R.No. 351 of 2006

ORDER

Balachandran, J.

The tenant/counter petitioner in R.C.P.No.93/04 on the file of the Rent Control Court, Kozhikode is the revision petitioner. The respondents filed petition for eviction of the petitioner/tenant invoking Sections 11(2)(b), 11(3) and 11(4)(v) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (hereinafter referred to as 'the Act'). The Rent Control Court disallowed eviction under Sections 11(2)(b) and 11(4)(v) of the Act, but allowed eviction sought for under Section 11(3) of the Act. The petitioner filed R.C.A.No.191/05 before the Rent Control Appellate Authority, Kozhikode impugning the eviction ordered under Section 11(3) of the Act. The appellate authority dismissed the said appeal concurring with the findings of the Rent Control Court as regards the

tenability of the claim under Section 11(3) of the Act advanced by the respondents. It is against the said concurrent findings of the authorities below under Section 11(3) of the Act that the tenant has come up in revision.

2. The case of the respondents/landlords, as alleged in the rent control petition, is that the scheduled room originally belonged to one Sreenivasan, who passed away on 14.7.2002; that they are the legal heirs of the said deceased Sreenivasan; that respondents 1 and 2 executed a settlement deed as Document No.2168/02 with respect to the scheduled room in favour of the third respondent, whereby she is the exclusive owner of the scheduled room and that the petitioner is a tenant under her. According to them, the husband of the third respondent has no permanent income and therefore, he bona fide wants the scheduled building for conducting a stationery business therein. The need advanced under Section 11(3) of

the Act was resisted by the petitioner contending that the husband of the third respondent is having job in Thikkodi Branch of Kerala Roadways. The said fact is admitted also by the third respondent in her testimony as PW1 and that of her husband as PW2. All the same, they contended that it was a temporary job and even with the income that is derived from the said job, they are unable to meet the expenses and it is, therefore, that they decided to start business in stationery in the scheduled building. It is contended before us by the learned counsel for the petitioner/tenant, relying on the decision in **Mohammed Basheer v. A.Mujib Rehman** (ILR 2005 (3) Kerala 235), that what has to be considered to decide the bona fide need alleged is to consider whether the need alleged is natural, real and sincere. The said decision was rendered in a case where an unmarried landlord asked for vacant possession of the scheduled building alleging that it is bona fide required for

conducting business of his own, when the evidence showed that vacant rooms belonging to his father and mother were available with him and that the landlord himself was residing with his parents. That is not the circumstances available in the instant case, where the third respondent/landlady is seeking for eviction of the petitioner/tenant from the tenanted premises so as to enable her husband to start a stationery business therein to augment their income.

3. As regards the benefit of second proviso to Section 11(3) of the Act, claimed by the petitioner/tenant, the authorities below observed that his wife has given evidence as RW1 that the petitioner is having income from the landed property as well. But, the petitioner was unable to establish on evidence that the main source of income for his livelihood is the income derived from the tea shop business run in the scheduled room. It was also found by the authorities below

that other vacant rooms were pointed out by the landlords, which would be available to the petitioner/tenant to shift his business; that even RW1 admitted that many buildings were constructed in the locality and that her evidence suggested that no enquiries were made by the petitioner/tenant, except that his children told him that those rooms are not available. The said statement of RW1 that buildings are not available in the locality is only on a hearsay. Thus, it was found by the authorities below that the petitioner/ tenant failed to establish on evidence that he is entitled to the benefit of second proviso to Section 11(3) of the Act, as he failed to establish either the first limb or the second limb of the said proviso. In the circumstances, we see no merit in this revision, filed assailing the findings of fact concurrently entered into by the authorities below, on the basis of which, eviction was ordered under Section 11(3) of the Act. This

revision, in the circumstances, deserves only to be dismissed.

In the result, we dismiss this Rent Control Revision. However, we grant the petitioner/tenant time of three months to surrender vacant possession of the scheduled building to the third respondent/ landlady on following conditions:

i. that he shall clear off all arrears in rents by making deposit of the entire rents in arrears before the execution court positively within one month from today;

ii. that he shall file an affidavit before the execution court reporting deposit of all the rents in arrears; undertaking that he would pay the future monthly rents on the due dates itself till he actually surrenders vacant possession of the scheduled building to the third respondent and undertaking unconditionally that he would surrender vacant possession of the scheduled room to the third respondent/landlady positively on or before

7.9.2007 and

iii. that in case of failure to comply with the above conditions, the petitioner shall be liable to be evicted immediately on the expiry of the said one month in execution of the order of eviction passed against him.

(J.B.Koshy, Judge)

7th June, 2007

(K.P.Balachandran, Judge)

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